

ARTICLE V. DEVELOPMENT REVIEW

Section 5.1 Applicability

A. Development review procedures and related standards under this article apply only to development applications that must be reviewed and approved by the Development Review Board (DRB), following a public hearing, before a zoning permit can be issued by the Zoning Administrator. For land subdivision review procedures, see Article VII. Development review procedures under this article include:

1. **Site Plan Review.** Site plan review under Section 5.3 is required for all “permitted uses” listed by zoning district under Article II, except for farming and forestry, single (one) and two family dwellings, associated accessory structures and accessory dwellings as specified under Section 4.15, home occupations and home child care facilities as specified under Sections 4.7 and 4.11, signs under Section 3.16, and other uses specifically exempt from these regulations under Section 10.2. Uses listed as “conditional uses” under Article II do not require separate site plan review and approval, but must meet applicable site plan review standards as included by reference under Section 5.4.
2. **Conditional Use Review.** Conditional use review under Section 5.4 is required for all “conditional uses” listed by zoning district under Article II, and to other development as specified in these regulations.
3. **Waivers and Variances.** Requests for waivers or variances from the requirements of these regulations may be considered by the DRB in association with site plan or conditional use review, or on appeal from a decision of the Zoning Administrator, only in accordance with Section 5.5 and the Act [§§4414, 4469].

B. **Coordination of Review.** If land subdivision is also proposed, final subdivision approval is required prior to site plan or conditional use review for the development of a subdivided lot; however site plan or conditional use review may be conducted concurrently with final subdivision review under Article VII as long as the application, notice, procedural requirements and review standards for each are met. Flood hazard area review under Article VI also may be conducted concurrently with site plan or conditional use review under this article.

1. For the review of development on a lot that has received prior subdivision approval, the DRB shall consider and incorporate all conditions of subdivision approval applicable to that lot. In the event that a condition of site plan, conditional use or flood hazard area approval is inconsistent with the conditions of subdivision approval, the more restrictive shall apply.

Section 5.2 Development Review Process

A. **Application Requirements.** Applications for site plan or conditional use review shall be submitted to the Zoning Administrator on forms provided by the town.

1. Applications shall also include:

- a. required fees,
- b. two original and twelve 11" x 17" copies of a site development plan,
- c. a copy of the state project review sheet,
- d. draft legal documents,
- e. other required information or supporting documentation identified from application checklists, or as specified by the Zoning Administrator, and
- f. any written requests to waive or modify specific development review standards under Section 5.5.

2. The Zoning Administrator shall refer complete applications to the DRB and copies of application information and public hearing notices to the following for review and comment as appropriate:

- a. Community officials, including the Underhill–Jericho Fire Department, for development that requires or may adversely affect community facilities and services.
- b. Underhill Road Foreman, for development located on or accessed from a town highway,
- c. Underhill Conservation Commission for development that may adversely affect significant natural, historic or scenic resources as identified in the Underhill Town Plan and any development located over 1500 feet in elevation.
- d. The Vermont Agency of Transportation for development located on or accessed from a state highway, and specifically for development that includes any requested reductions in front setback requirements from state highway rights-of-way.
- e. The State National Flood Insurance (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program, for development within the Flood Hazard Overlay District (see Article VIII).

3. The applicant is encouraged to contact the above listed officials prior to submitting an application for development review to the DRB, and to incorporate their recommendations in site layout and project design.

4. No DRB approval shall be issued until written comments have been received or thirty days have elapsed from the date of referral. The failure of the Zoning Administrator to notify the above listed parties shall not constitute grounds for appeal.

1 B. **Hearing.** Within 30 days of receipt of a substantially complete application, the Zoning
2 Administrator, in consultation with the Chair of the DRB, shall schedule a public hearing on
3 the application to be warned in accordance with the Act [§4426] and Section 10.7.

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5 1. If the hearing includes a variance request on appeal to the DRB, it must be held within
6 60 days of the date of the filing of a notice of appeal, as required under Section 10.5.

7
8 2. The DRB may waive one or more required application materials if it determines that
9 such information is unnecessary to make findings under applicable criteria of these
10 regulations. The DRB also may request additional information, including independent
11 technical analyses as provided for under Section 10.7, as needed to determine
12 conformance with these regulations. An application will not be considered complete by
13 the DRB until all necessary materials have been submitted.

14
15 3. The Board may recess and continue the hearing to a date and time specified, as
16 necessary to conduct site visits or to allow for the submission of additional information
17 from the applicant or other interested persons. No additional information or comments
18 shall be taken following hearing adjournment.

19
20 C. **Decision.** Within 45 days of the date of hearing adjournment, the DRB shall issue written
21 findings and a decision to approve, approve with conditions, or deny the application in
22 accordance with Section 10.7. Failure to act within this 45-day period, as decided on appeal,
23 shall be deemed approval on the 46th day. The DRB may specify as conditions of approval:

- 24
25 a. Modifications or changes to the proposed site layout and project design.
26 b. The submission of supporting documentation necessary to achieve or monitor
27 compliance with the standards of these regulations and conditions of approval.
28 c. Documentation to be submitted with the application for a certificate of occupancy
29 that all other required municipal and state approvals have been obtained.
30 d. Infrastructure improvements and associated easements or other dedications as
31 required to serve the proposed development, or to mitigate off-site impacts
32 resulting from the proposed subdivision, to be installed or paid for by the applicant.
33 e. The submission of a development agreement, performance bond or other surety
34 acceptable to the Underhill Selectboard.

35
36 D. **Appeal.** The applicant or another interested person who participated in the hearing
37 process may either request that the DRB reconsider a decision, or file an appeal of the DRB
38 decision to the Environmental Division of Superior Court, within 30 days of the date of
39 issuance, in accordance with Section 10.5.

40
41 1. The DRB may reject a request for reconsideration without hearing and render a decision
42 under Section 10.5, including findings of fact, within 10 days of the date of filing if it
43 considers the issues raised in the request have been decided in an earlier appeal or
44 involve substantially or materially the same facts as presented by or on behalf of the
45 appellant.

Section 5.3 Site Plan Review

A. **Purpose.** Site plan review is intended to ensure that site layout and development design are functional, safe, attractive, and consistent with the purpose and character of the district(s) in which the development is located. Standards specifically relate to the internal layout of the site, its physical design, and the functional and visual integration of the site with adjoining properties, uses and infrastructure.

B. **Standards.** The DRB may consider and impose appropriate safeguards, modifications and conditions relating to the following standards:

1. Existing Site Features.

a. Site layout and design, to the extent physically feasible, shall incorporate and avoid undue adverse impacts to significant natural, historic and scenic resources identified from the Underhill Town Plan, maps and related inventories, or through site investigation. These include but may not be limited to:

- i. existing topography and drainage patterns;
- ii. land above 1500 feet in elevation;
- iii. areas of steep (15%-25%) and very steep (>25%) slope (see Section 3.18);
- iv. surface waters, wetlands, and associated buffers (see Section 3.19);
- v. special flood hazard areas under Article VI;
- vi. delineated source protection areas (see Section 3.17);
- vii. significant wildlife habitat areas and travel corridors;
- viii. scenic resources including scenic viewsheds, open meadows, and prominent hillsides and ridgelines as viewed from public vantage points; and historic sites and structures, including existing cellar holes, stonewalls and fences.

b. The DRB may require one or more of the following measures as necessary to avoid or mitigate adverse impacts to natural, scenic and historic resources in the vicinity of the proposed development:

- i. Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
- ii. The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
- iii. Permanent protection of identified resource areas as designated open space.
- iv. The screening of development as viewed from public vantage points.
- v. The preparation and implementation of management plans for identified resources.

2. **Site Layout & Design.** The location and orientation of structures, and supporting infrastructure on the site shall be compatible with their proposed setting and context, as determined from specific policies of the Underhill Town Plan, zoning district objectives,

existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of these regulations, including density, setback, height and buffering requirements. To ensure that development is designed in a manner that is consistent with the existing and desired character of the district within which it is located, the following general standards shall apply as specified for particular district:

- a. **Underhill Flats Village Center and Underhill Center Village Districts.** Site design and layout shall reinforce a traditional, compact village settlement pattern characterized by a pedestrian scale and orientation, traditional densities and setbacks, well-defined streetscapes that include sidewalks or paths to facilitate pedestrian circulation, and a well-defined physical and visual edge to the built environment. Principal buildings shall be scaled and oriented in relation to adjoining structures, with principal façades and entrances facing the road or central greens, and shall establish or maintain a consistent front set back distance (building line) from the street in relation to adjoining structures.
 - b. **Rural Residential and Water Conservation Districts.** Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.
 - c. **Mt. Mansfield Scenic Preservation and Soil and Water Conservation Districts.** Site layout and design, to the extent physically feasible, shall avoid adverse impacts to natural and scenic resources and environmentally sensitive areas within these districts, including those resources listed under Subsection B.1. The applicant should consider, and the DRB may require one or more mitigation measures listed under Subsection B.1 as necessary to minimize adverse impacts to identified resources in the vicinity of the proposed development.
3. **Vehicle Access.** Vehicular access, including road intersections shall meet applicable town and state access management and design standards, including those set forth in Section 3.2. Curb cuts and road intersections shall not create hazards to vehicles, pedestrians or bicyclists on site or on adjoining roads, sidewalks and pathways. To ensure safety and manage access in a manner that maintains road capacity the DRB, in consultation with the town or state highway officials may:
- a. Limit the number and size of curb cuts in accordance with Section 3.2.
 - b. Require the reduction, consolidation or elimination of noncomplying curb cuts.
 - c. For parcels having direct access to more than one road, limit access to a side street or secondary (less traveled) road.

- d. Require shared access between adjoining properties with compatible uses, to be installed immediately if similar provision has been made on a contiguous parcel, or to be contingent upon the development or redevelopment of a contiguous parcel(s).
- e. Require access and driveway redesign as necessary to allow for emergency vehicle access.

4. **Parking, Loading & Service Areas.** On-site parking, loading and service areas shall be provided in accordance with the requirements of Section 3.13, and the following, with particular attention given to pedestrian and vehicular safety:

- a. Parking areas shall be located to the rear or side of the principal building(s), unless otherwise permitted by the DRB due to site constraints that would prevent reasonable use of the property or result in unsafe traffic conditions.
- b. Parking areas shall be landscaped to avoid large, uninterrupted paved areas in accordance with Section 3.13, and screened to minimize their visibility from public rights-of-way and neighboring properties.
- c. Shared parking and/or driveway connections to parking areas on adjacent properties with compatible uses, or provisions for future shared parking or driveway connections to adjoining parcels contingent upon their development or redevelopment, shall be required where physically feasible. In the event that such connections allow for shared parking between properties, overall parking requirements may be reduced pursuant to Section 3.13.
- d. Loading and service areas shall be provided onsite in accordance with Section 3.13, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping. Such areas shall be located, landscaped, and/or screened to minimize their visibility from public rights-of-way and neighboring properties.
- e. The outdoor storage or display of goods, supplies, vehicles, equipment, machinery or other materials is prohibited unless specifically approved by the DRB within a designated area, in accordance with Section 3.12 or as otherwise allowed for a specific use. Secured, covered and screened areas shall be provided for the collection and on-site storage of trash and recyclables generated by the proposed development.

5. **Site Circulation.** Provision shall be made for adequate and safe onsite vehicular and pedestrian circulation, with consideration given to the intended use of the property, the location of accesses, buildings, parking areas, and existing facilities onsite and on adjoining properties.

a. The site plan shall include clearly marked travel lanes, pedestrian crossings, and pedestrian paths or sidewalks that connect buildings, parking areas, and adjoining properties, unless it is determined by the DRB that such facilities are unnecessary to ensure vehicular and pedestrian safety and convenience.

b. The site plan shall incorporate sidewalks, recreation paths, proposed rights-of-way and related infrastructure improvements identified in duly adopted municipal improvement plans (e.g., sidewalk or streetscape plans), capital budgets or programs.

6. **Landscaping and Screening.** Landscaping shall be provided to enhance the overall appearance of the site, to integrate new development into its natural and historic surroundings, and to maintain or establish physical and visual compatibility with neighboring properties. Landscaping and natural screening shall be provided in front and side yards, adjacent to parking areas, and where rear yards abut residential properties or public roads as necessary to lessen and mitigate the physical and visual impacts of development. All proposed landscaping shall be designed in accordance with the following:

a. Existing vegetation shall be incorporated in site design, especially designated landmark, specimen or witness trees that are of special horticultural or cultural value.

b. The use of native species is recommended and may be required as necessary to avoid the introduction and spread of nuisance or exotic species (see List, Appendix D).

c. Landscaped areas, including front and side yard areas, are to include a mix of deciduous and coniferous trees, shrubs and ground cover. Landscaped areas should enhance the general appearance of the site, define planting strips and buffers, and reduce the amount of grass or lawn area. Such beds are not to be considered a substitute for tree plantings or other open space requirements.

d. Screening, including a mix of vegetation and/or fencing shall be provided between nonresidential parking areas and adjoining residential properties. Landscaping and fencing used to screen parking areas from an adjoining right-of-way shall not block sight distances at lot entrances or pedestrian access to the right-of-way.

e. Shade trees, shrubs and planting beds are to be used to interrupt the facades of buildings, break-up expanses of parking, visually reduce the scale and bulk of large buildings, integrate the site with the surrounding landscape and to enhance environmental quality—e.g., for wildlife habitat, soil stabilization, storm water retention, air quality, and energy conservation.

- 1 f. Street trees, to include a variety of deciduous, salt resistant, shade trees, are to be
2 planted at regular intervals as necessary to establish or maintain a canopy effect
3 along public roads and highways. In the event that the Town has adopted a street
4 tree plan for a district or road segment, the DRB may require tree plantings that are
5 consistent with that plan.
6
- 7 g. Shade and street trees shall be a minimum of 2.5" caliper (trunk diameter),
8 measured at a height of five feet, or, in the case of coniferous trees, be a minimum
9 of eight feet in height.
10
- 11 h. A landscaping plan, including a three-year maintenance plan, and bonding or other
12 surety may be required by the DRB as necessary to ensure proper installation and
13 maintained in accordance with Section 10.7.
14
- 15 7. **Outdoor Lighting.** Outdoor lighting installations shall meet the requirements of Section
16 3.11. The DRB may require the submission of an outdoor lighting plan, prepared by a
17 qualified engineer or lighting expert, for projects determined by the DRB to pose a
18 potential for significant off-site lighting impact due to the number, location and/or
19 intensity of proposed lighting fixtures.
20
- 21 8. **Stormwater Management and Erosion Control.** Temporary and permanent stormwater
22 management and erosion control measures shall be used during all phases of
23 development as necessary to minimize surface runoff and erosion, protect water
24 quality, and to avoid damage to downstream properties and infrastructure in
25 conformance with the following requirements.
26
- 27 a. Stormwater management and erosion control systems serving the development
28 shall be designed, installed and maintained in accordance with best management
29 practices accepted by the state, based on the upstream drainage area, size of storm
30 events, soil and slope conditions, the proposed type and density of development,
31 including total lot coverage at build-out.
32
- 33 b. All stormwater management systems shall be designed to accommodate existing
34 and anticipated runoff from the site, including anticipated flows from storm events
35 and total runoff generated at build-out and, to the extent physically feasible to:
36
- 37 i. Maximize onsite infiltration and treatment, and minimize surface runoff
38 through the use of "Low Impact Development" (LID) strategies (see Appendix
39 E).
40
- 41 ii. Integrate natural drainage systems in site and stormwater management system
42 design.
43
- 44 iii. Minimize the need for expensive system maintenance.
iv. Integrate stormwater storage and treatment facilities (e.g, retention ponds) in
site design.

- v. Avoid flooding or damage to adjoining properties and downstream drainage facilities.
- c. The applicant shall demonstrate that existing downstream drainage facilities will be able to accommodate any additional runoff from the site. If increased runoff exceeds the capacity of downstream drainage, storage or treatment facilities, the DRB may require that the applicant install:
 - i. additional onsite stormwater infiltration, retention and treatment facilities and/or
 - ii. off-site improvements to downstream drainage facilities and infrastructure as necessary to accommodate additional runoff from the site.
- d. The DRB may require the submission of a stormwater management and erosion control plan for all phases of development, prepared or certified by a licensed professional engineer, as necessary to determine conformance with these regulations. The plan shall incorporate best management practices as recommended by the state in the most recent editions of the "Vermont Stormwater Management Manual" and the "Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites" or similar state-issued publications.
- e. The DRB may also require, as necessary to ensure conformance with these regulations:
 - i. Project phasing as necessary to minimize the extent of soil disturbance and erosion during each phase of development.
 - ii. Increased surface water and wetland setback distances and buffer areas (under Section 3.19) and/or the submission and implementation of a buffer management plan to protect surface waters and wetlands from accelerated runoff, soil erosion and sedimentation.
 - iii. Drainage easements or municipal approvals as necessary to accommodate drainage directed onto adjoining properties or public rights-of-way.
 - iv. Documentation that state stormwater and construction permits have been obtained, which may also serve as documentation of compliance with applicable requirements of these regulations.

Section 5.4 Conditional Use Review

A. **Purpose.** Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and

potential for off-site impacts warrant more careful scrutiny by the Development Review Board (DRB). Standards and conditions relate to the identification, avoidance and/or mitigation of potential impacts.

B. **General Standards.** Conditional use approval shall be granted by the DRB only upon finding that the proposed development shall not result in an undue adverse effect on any of the following:

1. **The capacity of existing or planned community services or facilities.** The applicant and DRB shall consider the demand for community services and facilities resulting from the proposed development in relation to the available capacity of existing and planned community services and facilities. Community facilities and services that may serve a proposed development include schools, emergency services, community water supply and wastewater systems, public parks and trail networks, and public utilities as identified from the Underhill Town Plan, an adopted municipal capital improvement program, or through site investigation.
 - a. Available capacity shall be determined through consultation with municipal and state officials having jurisdiction over affected services and facilities, and consideration of any duly adopted municipal capital budget and program in effect.
 - b. Conditions will be imposed as necessary to ensure that the demand for community facilities or services does not exceed available capacity. Such conditions may include the phasing of development, the installation of facilities or improvements by the developer as required to serve the proposed development, and the submission of a development agreement, performance bond, or other surety, as approved by the Select Board, for the installation of such facilities or improvements.
2. **The character of the area affected.** The applicant and DRB shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area affected, as defined by zoning district purpose statements and specifically stated and relevant policies and standards of the Underhill Town Plan.
 - a. Mitigation measures shall be employed by the applicant as necessary to avoid undue adverse impacts to the character of the area. These measures may include site plan or building design modifications; increased setback distances, buffers, or screening; the designation of building envelopes to minimize impacts to significant natural, historic or scenic resources or other measures acceptable to the DRB.
3. **Traffic on roads and highways in the vicinity.** The applicant and DRB shall consider the projected impact of traffic resulting from the proposed development on the condition, capacity, safety, efficiency and use of existing and planned roads, bridges, intersections and associated highway infrastructure in the vicinity of the proposed development; and

shall not approve a project that would result in significant congestion (e.g., a Level of Service below C), or the creation of unsafe conditions for motorists or pedestrians.

- a. Commonly accepted transportation standards (e.g., Vermont Agency of Transportation, Institute of Transportation Engineers) shall be used to identify trip generation rates and to evaluate traffic impacts.
- b. A traffic impact analysis, prepared by a qualified transportation professional, is required for any project that generates 75 or more peak hour trips, or as otherwise deemed necessary by the DRB to address existing or proposed site, road and traffic conditions. The study shall include directional distributions, levels of service, design considerations and capacity determinations, and recommend appropriate traffic mitigation measures and road improvements.
- c. Proposed development shall incorporate planned highway improvements, including planned right-of-way improvements or realignments, in site design and traffic analyses.
- d. Conditions shall be imposed as necessary to avoid or mitigate undue adverse impacts to existing and planned road and intersection improvements and levels of service. Such conditions may include the phasing of development in relation to planned highway improvements, traffic management strategies, or physical improvements to the road network required to serve the proposed development, to be paid for and installed by the applicant, and the submission of a development agreement, performance bond, or other surety as approved by the Select Board, for the installation of such improvements.

4. **Bylaws in effect.** The applicant and DRB shall consider whether the proposed development complies with all municipal bylaws and ordinances in effect at the time of application, including other applicable provisions of these regulations. No development shall be approved in violation of existing municipal bylaws and ordinances.

- a. Conditions may be imposed by the DRB as necessary to ensure compliance with municipal bylaws and ordinances. Certificates of occupancy for an approved project shall not be issued until all required municipal, state and federal permits have been obtained.

5. **The utilization of renewable energy resources.** The proposed development shall not interfere with the sustainable use of renewable energy resources, including access to, or the direct use or future availability of such resources.

- a. Conditions may be imposed as necessary to ensure long-term access, use, and availability of such resources onsite or on adjoining properties.

C. **Site Plan Review Standards.** In addition to the general standards set forth in Section B above, the Development Review DRB shall also apply all applicable site plan review standards set forth in Section 5.3. Compliance with such standards shall be a requirement of conditional use approval.

D. **Specific Standards.** The DRB also may consider the following standards and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:

1. **Conformance with the Town Plan.** The proposed development shall conform to specific policies and objectives of the Underhill Town Plan as most recently amended.
2. **Zoning District & Use Standards.** All proposed development shall comply with dimensional, density and associated standards for the district(s) in which the use or development is located as specified in Article II, except as waived under Section 5.5, as modified for planned residential or planned unit developments under Article IX, or as otherwise required for a specific use. The DRB may also require increased setbacks and buffers, or reduced lot coverage or densities of development as necessary to avoid or mitigate adverse impacts to adjoining properties or significant natural, historic or scenic resources in the vicinity of the development.
3. **Performance Standards.** The proposed use shall comply with all performance standards set forth in Section 3.14. In determining compliance, the DRB may consult with state officials and consider accepted industry standards. To ensure compliance, the DRB may as conditions of approval:
 - a. Require documentation that proposed uses, processes, or equipment will comply with applicable performance standards.
 - b. Require increased setback distances and buffers from property lines.
 - c. Reasonably limit hours of operation.
4. **Legal Documentation.** Legal documentation shall be provided as necessary to ensure that that all required improvements, rights-of-way and easements, and other common lands or facilities will be installed and adequately maintained either by the applicant, an owners association, or through other legal means acceptable to the DRB, in accordance with Section 10.7.

Section 5.5 Waivers & Variances

A. **Applications & Review Standards.** The DRB may waive application requirements, and site plan or conditional use review standards under Section 5.3 and 5.4, that it determines are not relevant to a particular application.

B. **Dimensional Waivers.** The DRB, in association with site plan or conditional use review, or on appeal of a Zoning Administrator's determination, may reduce minimum district

1 setback requirements (under Tables 2.2 – 2.8) or minimum surface water and wetland
2 setbacks (under Section 3.19) in accordance with the Act [§4414] and the following
3 requirements.

4
5 1. A waiver request, including information regarding the specific circumstances, need and
6 justification for the waiver shall be submitted in writing with the application for site plan
7 or conditional use review.

8
9 2. A waiver under this section may be granted by the DRB only as necessary to:

- 10
11 a. Allow for the reasonable development and use of a pre-existing nonconforming lot
12 under Section 3.8.
13 b. Allow for additions or improvements to a pre-existing nonconforming structure
14 under Section 3.9.
15 c. Comply with federal or state public health, safety, access and disability standards.
16 d. Allow for the siting of renewable energy structures.

17
18 3. The minimum required setback distance shall be reduced by no more than 50% under
19 this provision. Variance approval under Subsection C shall be required for any further
20 reduction in dimensional requirements.

21
22 4. In granting a waiver under this section, the DRB shall find, based upon clear and
23 convincing evidence of a specific need and circumstances that:

- 24
25 a. No reasonable alternative exists for siting the structure, addition or improvement
26 outside of the required setback area.
27
28 b. The reduced setback is not contrary to public health, safety and welfare, stated
29 objectives and policies of the Underhill Town Plan, or the intent of these
30 regulations.
31
32 c. The waiver represents the minimum setback reduction necessary to allow for the
33 proposed development.
34
35 d. Any potential adverse impacts resulting from reduced setbacks on adjoining
36 properties, surface waters or wetlands shall be mitigated through site design,
37 landscaping and screening, or other accepted mitigation measures.

38
39 C. **Variances.** In accordance with the Act [§4469], a variance from the provisions of these
40 regulations may be granted by the DRB for a structure only if literal enforcement of these
41 regulations results in undue hardship to the appellant that precludes any reasonable use of
42 the property.
43

1. The DRB shall hear and decide requests for variances in accordance with the appeal procedures under Section 10.5. Variance requests also may be considered concurrently with site plan or conditional use review. The request for a variance shall include:
 - a. Information required under Section 10.5 and the Act [§4466] for a notice of appeal, including:
 - i. a copy of the application, or brief description of the property in question for which a variance is being requested,
 - ii. a reference to the regulatory provisions from which a variance is requested,
 - iii. a description of the relief requested, and
 - iv. the grounds why the requested relief is proper, under the circumstances.
 - b. Information necessary to make findings under each of the variance criteria specified below.
2. The DRB shall grant a variance, and render a decision in favor of the applicant or appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:
 - a. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
 - b. Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.
 - c. The unnecessary hardship has not been created by the applicant or appellant.
 - d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
 - e. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.
3. **Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and

1 other similar renewable energy structures) the DRB may grant such variance only if *all* of
2 the following facts are found in the affirmative and specified in its written decision:

- 3
- 4 a. It is unusually difficult or unduly expensive for the appellant to build a suitable
5 renewable energy resource structure in conformance with these regulations.
6
- 7 b. The hardship was not created by the applicant or appellant.
8
- 9 c. The variance, if authorized, will not alter the essential character of the
10 neighborhood or district in which the property is located, substantially or
11 permanently impair the appropriate use or development of adjacent property,
12 reduce access to renewable energy resources, or be detrimental to the public
13 welfare.
14
- 15 d. The variance, if authorized, will represent the minimum that will afford relief and
16 will represent the least deviation possible from these regulations and from the plan.
17

- 18 4. **Variances within the Flood Hazard Overlay District.** In addition to requirements under
19 Subsection C.2, variances from flood hazard area development standards under Article
20 VI for development within the Flood Hazard Overlay District (Special Flood Hazard
21 Areas) must meet the requirements of Section 6.8.